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July 11, 2005

Mary L. Cottrell, Secretary  
Department of Telecommunications & Energy  
Commonwealth of Massachusetts  
One South Station, Second Floor  
Boston, MA 02110

**Re: D.T.E. 05-04 – Verizon Massachusetts’ Complaint Concerning  
Customer Transfer Charges Imposed by Broadview Networks, Inc.**

Dear Ms. Cottrell:

Enclosed for filing in the above-referenced matter is Verizon Massachusetts’  
Initial Brief.

Thank you for your assistance in this matter.

Very truly yours,

A handwritten signature in cursive script that reads "Barbara Anne Sousa".

Barbara Anne Sousa

Enclosures

cc: Jesse Reyes, Hearing Officer  
Paula Foley, Assistant General Counsel - Telecommunications Division  
Michael Isenberg, Director - Telecommunications Division  
April Mulqueen, Assistant Director - Telecommunications Division  
Stella Finn, Analyst – Telecommunications Division  
Attached D.T.E. 05-04 Service List

**COMMONWEALTH OF MASSACHUSETTS**  
**DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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Complaint of Verizon Massachusetts  
Concerning Customer Transfer  
Charges Imposed By Broadview  
Networks, Inc.

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**D.T.E. 05-4**

**INITIAL BRIEF OF VERIZON MASSACHUSETTS**

Broadview Networks Inc. (“Broadview”) is the only carrier in Massachusetts to impose Service Transfer Charges on Verizon Massachusetts (“Verizon MA”) when an end-user customer switches his/her telephone service from Broadview to Verizon. As demonstrated by Verizon MA’s complaint and the record evidence presented in this proceeding, Broadview’s assessment of those charges is unreasonable, unfair, and unlawful.

There is no reasonable basis for Broadview to assess Service Transfer Charges on Verizon MA. Broadview’s charges are *not* comparable to Verizon MA’s charges – which apply *only* when Verizon MA provides *wholesale* services, such as unbundled network elements (“UNEs”), to enable the new carrier to serve Verizon’s former retail customer. When a customer migrates from Verizon MA to a *fully facilities-based* carrier<sup>1</sup> (which is the precise counterpart of the situation in which a customer migrates from Broadview to Verizon MA), Verizon MA does not impose any charges at all on the carrier for

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<sup>1</sup> The term “fully facilities-based” is used here to refer to a carrier — such as a cable or wireless company — that serves its end-user customers over its own facilities and, therefore, does not use Verizon MA’s loops or switches.

processing this “naked” service order because no specific, underlying wholesale services - such as UNE loops or ports - are ordered or provided. *See* Verizon MA Complaint, ¶ 8.

By contrast, Broadview’s Service Transfer Charges are triggered simply by the *event* of a Broadview end-user customer transferring service to Verizon MA – *not* by any network facility or *service* that it provides to Verizon. Absent a linkage to a wholesale – or any other – service requested by or provided to Verizon MA in connection with the customer transfer, there is no justification for Broadview to impose *any* charge on Verizon MA. Verizon Exhibit 1, at 3-4. Indeed, if Broadview was truly adopting Verizon MA’s charges for providing the same functions or services — rather than simply plucking numbers out of Verizon MA’s tariff — then it would not impose *any* charge at all for a service transfer.

In the absence of adopting a *comparable* Verizon MA rate, Broadview should be required to justify its Service Transfer Charges by specifically identifying the precise costs that it incurs and seeks to recover. Broadview has produced no such cost study.

Finally, in considering the identical issue presented here, the New York Public Service Commission (“NYPSC”) recently ruled that Broadview’s Service Transfer Charges are *not* analogous to Verizon’s charges and, therefore, Broadview should not be allowed to charge those rates.<sup>2</sup> While the NYPSC recognized that Broadview may incur some “negligible” costs associated with performing administrative tasks to transfer an end-user customer’s service, the NYPSC found that “Broadview has not quantified those costs, nor does Verizon charge other carriers in a similar situation.” *Broadview Order* at

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<sup>2</sup> Complaint and Petition of Verizon New York Inc. Concerning Service Transfer Charges Imposed by Broadview Networks, Inc., Case 05-C-0066, *Order Granting, In Part, Verizon New York Inc.’s Complaint and Petition on Broadview Networks, Inc.’s Customer Service Transfer Charges*, at 7 (issued and effective June 29, 2005) (hereinafter referred to as “*Broadview Order*”).

7. Therefore, the NYPSC directed Broadview to eliminate its Service Transfer Charge tariff provisions. *Id.* at 8. The Department should reach the same result here and direct Broadview to remove the Service Transfer Charge provisions from its Massachusetts Access Tariff.

### **ARGUMENT**

**A. Broadview's Access Service Tariff Does Not Apply to Verizon MA and Should Not Be Used to Impose Service Transfer Charges.**

Broadview has billed Verizon MA Service Transfer Charges pursuant to Section 9.1 of its Massachusetts Access Services Tariff (M.D.T.E. Tariff No. 2). That Tariff was amended on August 22, 2003, to assess Service Transfer Charges

...against a requesting local carrier when a customer disconnects local exchange service from the Company and switches to the requesting local exchange carrier. This charge is applied on a per-line basis for each Local Service Order Request received by the Company [Broadview].

*See* Verizon MA Complaint, ¶ 3, and Exhibit M.D.T.E Tariff No. 2, at § 9.1. Those charges, which are applied on a *per line* basis, are \$1.02 and \$15.39 for “Electronic Processing” and “Manual Processing,” respectively. *Id.* at § 9.1.1; Verizon Exhibit 1, at 5. That tariff change became effective on September 22, 2003.

Broadview's billing of Verizon MA is in conflict with its Access Tariff as a whole. As stated on the Title Page, the Tariff “applies to the Access Services furnished by Broadview Networks, Inc. between one or more points within the Commonwealth of Massachusetts.” *See* Verizon MA Complaint, ¶ 3, and Exhibit M.D.T.E Tariff No. 2, Title Page. The “General Regulations” – which govern the scope and application of the Access Tariff - state that “[t]his tariff contains regulations, rates and charges applicable to the provision of access services by Broadview Networks, Inc. to *Customers*.” *Id.* at § 2.1.1

(emphasis added). Under this overarching provision, Broadview's Service Transfer Charges, as set forth in Section 9.1 of the Tariff, would not apply to Verizon.

Verizon MA is not a "Customer" of Broadview, as defined in Section 1.2 of Broadview's Access Tariff. A "Customer" is referred to as an entity "which subscribes to the services offered under this tariff, including both Interexchange Carriers and End Users." *Id.* at § 1.2. Verizon MA is neither an interexchange carrier with respect to the "service transfers" at issue here, nor an end user. Indeed, the definition of "End User" in Section 1.2 of that Tariff specifically excludes carriers, except to the extent that they use service for administrative purposes. Moreover, Verizon MA does not "subscribe" to any Broadview services in connection with service transfers.

It is well established that the terms of the tariff form part of the contractual relationship between the parties. *See Wilkinson v. New England Tel. & Te. Co.*, 327 Mass. 132, 135, 97 N.E.2d 413 (1951). Under Massachusetts law, a common carrier may not construe its tariff in an "unreasonable" manner. *See Boston Phoenix v. New England Tel. & Tel. Co.*, 1996 Mass. Super. LEXIS 157 at \*26 (1996); *New England Tel. & Tel. Co. v. National Merchandising Corp.*, 335 Mass. 658, 664-65, 141 N.E.2d 702 (1957). The language "must be considered in light of the other words surrounding [it]," and its scope and meaning must be determined by reference to context. *Commonwealth v. Brooks*, 366 Mass. 423, 428, 319 N.E.2d 901 (1974). Massachusetts courts have also adhered to the standard rule of construction that if language is ambiguous, it will be construed against the drafter under the principle of *contra proferentum*. *See Vappi & Co., Inc. v. Aetna Casualty & Surety Co.*, 348 Mass. 427, 431, 204 N.E.2d 273 (1965);

*Metropolitan Property and Casualty Insurance Company v. Gary Lombard et al.*, 197 Mass. Super. LEXIS 235 at \*8 (1997).

While Broadview clearly *wants* to apply these Service Transfer Charges to Verizon MA (as evidenced by the fact that it has already billed Verizon MA), the lawfulness of doing so is not determined by Broadview's desires and intentions, but by the words of the tariff that Broadview drafted and filed. Broadview has chosen to include these charges in its Access Tariff even though they are unrelated to access services (thus, in effect, concealing those charges from potentially affected entities). Yet, the ambiguity created by the General Regulations drafted by Broadview itself – and the dubious legality of the charges (if applied in the manner that Broadview desires) - suggest that the standard *contra proferentum* rule should be applied to interpret the Service Transfer Charge provisions of the Access Tariff as inapplicable to Verizon MA. Accordingly, the Department should find that Verizon MA is not subject to Broadview's Access Tariff, and that any Service Transfer Charges billed to Verizon MA pursuant to that Tariff are unlawful.<sup>3</sup>

**B. Broadview's Service Transfer Charges Do Not Mirror Verizon MA Charges.**

Broadview contends that its "Electronic Processing" and "Manual Processing" Service Transfer Charges mirror the Service Order Charge and Manual Intervention Surcharge, respectively, that Verizon MA itself imposes on other carriers when a Verizon MA end-user customer transfers service. Broadview Exhibit 1, at 15. While the

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<sup>3</sup> The issue of whether Verizon MA has paid the Service Transfer Charges billed by Broadview is irrelevant to the issue of the validity of such charges. Given the inapplicability of the charges to Verizon MA under Broadview's Access Tariff - and their unlawfulness under Massachusetts law - Verizon MA should not be charged any past-due amounts.

Verizon rate levels may be equal to Broadview's Service Transfer Charges<sup>4</sup> - a fact that Verizon MA does not dispute - the application of those charges is not. Indeed, Broadview's Testimony ignores the circumstances under which Verizon MA charges are imposed — circumstances that are very different from those in which Broadview seeks to impose its Service Transfer Charges. Broadview Exhibit 1, at 4-8.

Verizon MA's UNE/Switched Interconnection Service Order Charge of \$1.02 applies *only* when a CLEC orders certain Verizon wholesale services (*e.g.*, UNE loops, ports or switched interconnection services). *See* Verizon Tariff M.D.T.E. No. 17, Part A, Sec. 3.3.2; Verizon Exhibit 1, at 13. Verizon MA's UNE/Switched Interconnection Manual Intervention Surcharge of \$15.39 applies *only* when CLEC orders for those wholesale services are submitted other than through the standard electronic interfaces. *Id.* Verizon MA's charges are *never* applied on a stand-alone basis, *i.e.*, in the absence of a valid, underlying wholesale charge (and an associated wholesale service), merely because Verizon MA loses a customer to another carrier. Thus, Verizon MA does *not* impose *any* charge - Service Order, Manual Intervention, or other - when it loses a customer to a *fully facilities-based* CLEC that is prepared to serve the customer using its own loop and switching facilities and, thus, does not require any Verizon wholesale services. This is true even though Verizon MA may incur certain administrative and other costs in connection with that customer migration.

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<sup>4</sup> It should be noted that although the rate levels *per se* are the same, Broadview computes its rates differently. For example, Broadview's Access Tariff specifies that these charges, when they apply at all, apply on a per-line basis, not on a per-order basis, as specified in Verizon MA's Tariff. Verizon Exhibit 1, at 14. This creates tremendous rate disparity resulting in higher charges calculated on a per-line basis under Broadview's Tariff. *See e.g.*, Broadview Exhibit 9. In addition, Broadview's Access Tariff differs in that it does not limit the circumstances under which the "Manual Processing" charge would apply to situations in which the CLECs fail to use the available electronic ordering system to place an order for service. *See* Verizon Tariff M.D.T.E. No. 17, Pt. A, Sec. 3.3.2.

In sharp contrast, Broadview seeks to impose its Service Transfer Charges on Verizon MA when a Broadview retail end-user customer simply elects to transfer service to Verizon MA. However, Broadview does not perform any tasks comparable to those for which Verizon MA imposes Service Order or Manual Intervention charges because Verizon MA orders no network facility or service from Broadview, but instead provides service to its new customer entirely over its own facilities. Thus, Broadview's charges are *not* comparable to Verizon MA's charges for the "same or similar service," as Broadview erroneously claims. Broadview Exhibit 1, at 15.

In addition, Broadview contends that it incurs costs that are "comparable to those for which Verizon assess Service Order Charges and Manual Intervention Surcharges." *Id.* at 4. Broadview provides no independent cost study to substantiate its claims. Nor does Broadview acknowledge the clear distinction between its separate, stand-alone Service Transfer Charges and Verizon MA's Service Order Charge and Manual Intervention Surcharge, which are imposed only when Verizon provides certain separate, identifiable wholesale services to CLECs. Instead, Broadview bases its argument on a misinterpretation of both Verizon MA's Wholesale Tariff - M.D.T.E. No. 17 - and Verizon MA's TELRIC cost testimony supporting its nonrecurring UNE charges. *Id.* at 5.

For example, Broadview asserts that "Verizon's Manual Intervention Surcharge 'appl[ies] when the electronic ordering system is not used to place an order for services'" and thus is comparable to Broadview's "Manual Processing" Service Transfer Charge, which "likewise is intended to recover the additional costs Broadview incurs when a requesting carrier declines to utilize Broadview's electronic [Web Center]" to facilitate



the transfer of an end-user customer's local exchange service. *Id.* at 6. The Verizon tariff provision cited by Broadview does not, however, support Broadview's contention. Rather, it simply provides that, when a CLEC fails to place its order for a UNE or Switched Interconnection using the electronic ordering system, a surcharge applies for placing that order manually. In comparing the charges, Broadview ignores the fact that Verizon MA's Manual Intervention Surcharge - like the Service Order Charge - is not a stand-alone rate, but are imposed *only* in connection with ordering, pre-ordering, and similar operations support functions related to specific, underlying wholesale UNEs and Switched Interconnection services.

Likewise, Broadview's reference to Verizon MA's TELRIC cost testimony in support of its prices for nonrecurring charges applicable to UNEs is equally unavailing. Broadview states that Verizon's Service Order Charge "recovers the costs associated with the performance of functions necessary 'to issue an order in the TISOC organization *resulting from a CLEC request for service,*' and applies *anytime a CLEC makes such a request.*" *Id.* Here, too, the costs Verizon MA examined in its TELRIC cost testimony relate to activities associated with the ordering of UNEs or Switched Interconnection services. As explained above, when an end-user customer migrates from Verizon MA to a *fully facilities-based* carrier, Verizon MA does not impose any charges at all on the CLEC for processing this service order, even though Verizon may incur certain administrative and other costs in connection with the migration. Verizon Exhibit 1, at 14 (*citing* D.T.E. 01-20-A, Verizon's Nonrecurring Cost Model, Cost Summary, Part I, dated June 12, 2003); Verizon Exhibits 7, 9 and 13. Accordingly, Verizon MA's rates have *no* connection whatsoever with any of the *costs* that Broadview may incur because

the costs underlying Verizon MA's rates do not include any costs for *disconnecting* an end-user customer's service.

In conclusion, the Verizon MA charges that Broadview allegedly "mirrors" in its tariff relate to the provisioning of specific Verizon MA UNEs or Switched Interconnection services, not the performing of administrative functions required to transfer an end-user customer's retail service. Broadview has not identified a single instance in Verizon MA's tariff where the Service Order or Manual Intervention charges are imposed absent a CLEC order for a UNE or Switched Interconnection service – nor can it. Although Verizon MA, like Broadview, may incur costs to perform certain administrative functions associated with the transfer of a retail end-user customer's service to another carrier, Verizon MA does not impose Service Order or Manual Intervention charges when a CLEC wins a customer from Verizon MA. Thus, the "analogous Verizon charge" — the charge that Broadview *should* be mirroring — in that instance is not \$1.02 (the level of Verizon's UNE/Switched Interconnection Service Order Charge) or \$15.39 (the level of Verizon's UNE/Switched Interconnection Manual Intervention Surcharge), but *zero*.

**C. Verizon MA Requests No Wholesale Services - and Broadview Incurs No Costs Chargeable to Verizon - In Connection with a Retail Customer's Transfer of Service.**

Broadview admits that Verizon MA does not use any elements of Broadview's network (e.g., UNE loops or ports) to serve an end-user customer transferring from Broadview, but instead provides service entirely over its own loop and switching facilities. Verizon Exhibits 14, 15 and 16. Nor does Verizon MA (as a *fully facilities-based* carrier) need or request Broadview to rearrange its network during or after the

transfer, and Verizon MA is indifferent as to whether such rearrangements occur. Verizon Exhibit 1, at 7.

The physical work of transferring the Broadview customer to Verizon MA's switching facilities and establishing new service – *i.e.*, physical cut-over, dial tone availability, and number porting – is within the control of a single entity – Verizon MA, and is done entirely on Verizon MA's network. Verizon MA does not ask Broadview to connect circuits, disconnect them, or otherwise physically wire or rearrange its network or central office in any way in connection with migrating the customer's service. Likewise, because the end-user customer is transferred from Broadview to a Verizon MA switch, the new dial tone is provided by Verizon MA. Verizon MA is also the carrier responsible for sending the Numbering Portability Administration Center ("NPAC") the final notification to port the customer's number. Accordingly, the only coordination that is necessary to ensure continuity of service for the customer occurs *within* Verizon MA itself. *Id.* at 6-7.

Broadview's role in accommodating the desire of its former customer to transfer local service to another carrier is minimal, and thus it incurs little or no associated costs. Broadview's activities consist of receiving and confirming the Local Service Request ("LSR") from Verizon MA to notify Broadview that the retail customer's line is to be disconnected and responding to supplemental requests on the LSR. Verizon Exhibit 1, at 4. In this context, Broadview must perform only four functions, all of which relate to porting<sup>5</sup> the customer's telephone number: (1) perform switch line translation that allows

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<sup>5</sup> Broadview may choose to do more than merely facilitate the porting of the customer's number – such as move, connect, disconnect, or rearrange facilities on its own network in order to ensure that it will be able to re-use, for the benefit of another retail customer, the switch ports and other network equipment that were previously used to provide service to the transferred customer. It

completion of calls to the newly ported number without simultaneous disconnection of the number from the previous provider's (Broadview's) switch; (2) release the telephone number through NPAC the day before the due date for migrating the customer's service to Verizon MA; (3) unlock the E911 database so that Verizon MA can update the customer's information; and (4) remove the directory listings. *Id.* at 6. These same functions are performed by Verizon MA when transferring customers to a *fully facilities-based* CLEC – *at no charge*.

Broadview acknowledges that those activities are retail-related, stating that it would perform those functions when a customer simply disconnects service. Broadview Exhibit 1, at 12 n. 8. Yet, Broadview attempts to bill competing carriers – such as Verizon MA - for such activities, which “is not consistent with [its] obligation to support” number portability under the 1996 Act. Verizon Exhibit 1, at 12-13. The FCC has made it clear that these costs are properly classified as “customer-specific costs directly related to providing number portability,” and that rates set to recover those costs are subject to the FCC’s exclusive jurisdiction – not state regulation. *See Telephone Number Portability*, CC Docket No. 95-116, Third Report and Order, 13 FCC Rcd 11701 (rel. May 12, 1998), ¶¶ 28, 29, 38, 72; *Telephone Number Portability*, CC Docket No. 95-116, Memorandum Opinion and Order on Reconsideration and Order on Application for Review, 17 FCC Rcd 2578 (rel. Feb. 15, 2002), ¶¶ 9-12. Therefore, Broadview is prohibited under federal law from recovering the costs for number porting activities

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may also wish to update its databases, billing systems, and switch translations to reflect the customer's departure. Broadview may even decide to alert its marketing department so that it can attempt to win back the customer. All of those steps, however, are taken by Broadview for its own benefit, and in support of its retail business. Verizon Exhibit 1, at 8.

associated with the relinquishment of a customer through intrastate Service Transfer Charges. Verizon Exhibit 1, at 7-8.

In addition, Broadview identifies simple administrative tasks associated with closing out its customer service records for the departing retail customer. Broadview Exhibit 1, at 5-8. Those tasks are *not*, however, related to Broadview's provision of any *wholesale* services that Verizon MA or other CLECs may need to effectuate customer migration. They are fundamentally *retail* tasks – and Broadview would have to perform essentially the same functions regardless of whether its customer transfers to Verizon MA or another carrier, dies, moves to another state, disconnects wireline service, or discontinues telephone service altogether without opening a new account with another carrier. In view of this fact, the costs Broadview seeks to collect have nothing to do with the fact that Verizon MA or any other CLEC is becoming the customer's service provider. Rather, the sole necessary and sufficient cause of the costs is the customer's decision to *cease* using Broadview as a service provider. *See* Verizon MA Complaint, ¶ 4. Any allowable costs associated with the bare act of Broadview relinquishing a *retail* customer or cleaning up its *retail* records to reflect the loss of that customer are properly regarded as *retail* costs that should rightfully (and may already) be recovered, if at all, from the true cost causer -the Broadview retail customer (not from Verizon MA and other carriers) - via retail rates or absorbed by Broadview as a general cost of providing retail service. Verizon Exhibit 1, at 12-13.

Verizon MA's wholesale Service Order Charge and Manual Intervention Surcharge – which Broadview claims to mirror in its Service Transfer Charges - include no retail costs for *disconnecting* a customer's service when Verizon MA loses a customer

to a *fully facilities-based* carrier. See *Supra* at § B. Even if Broadview produced its own cost studies to demonstrate that it incurs costs associated with those *retail* functions – which it did not - Broadview should not be permitted to recover those *retail* costs from the succeeding service provider (e.g., Verizon MA) by imposing *wholesale* Service Transfer Charges.<sup>6</sup> Verizon Exhibit 1, at 15. Relinquishing a customer upon the customer's request, so that he or she may change service providers, is an obligation that every exchange carrier owes, and a service that it provides, to its retail customers. In the corresponding situation of Verizon MA performing similar tasks to transfer its retail end-user customer's service to a *fully facilities-based* carrier, Verizon MA imposes no such "service transfer" charges. Verizon Exhibits 2, 4, 8 and 10. Verizon MA is also unaware of any other CLEC that imposes such charges in Massachusetts or any other New England state in this situation.

Finally, it is anti-competitive to permit Broadview to require another carrier competitor (i.e., Verizon MA) to subsidize its retail operations by contributing to the recovery of its retail costs. As aptly stated in this proceeding by another Massachusetts CLEC, Level 3 Communications, LLC in comments (at page 4) filed March 11, 2005, with the Department in this proceeding,

The Department should rule decisively against port-out fees. In Level 3's experience, Broadview's practice is a growing problem in the industry. Directly or indirectly, penalizing end-users that choose new providers and the new providers that have been chosen while rewarding the

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<sup>6</sup> The argument that Broadview - as a CLEC - should be permitted to adopt comparable Verizon MA rates without producing cost support is not applicable here since Verizon MA's rates are applied differently. Moreover, Broadview would have to demonstrate, at a minimum, that the costs at issue here are not *already* recovered in its retail rates. It would be surprising if Broadview's retail rates did not make some provision for the disconnect costs that it would ultimately incur when a customer leaves it - whether to transfer to another carrier or for some other reason.

losing provider with new revenue threatens to chill competition and reduce consumer choice. Until the Department and other regulatory bodies clarify that port-out fees are invalid, newly chosen carriers risk losing new customers' business through number porting entirely because of their inability to overcome the anti-competitive barriers erected by the old carrier.

Verizon MA agrees.

Through its Service Transfer Charges, Broadview simply seeks to penalize local exchange companies, such as Verizon MA, from competing successfully with Broadview. The charges are thus an unlawful customer transfer charge that is anti-competitive both in intent and in effect. *See* Mass. General Laws c. 159, § 17. Moreover, by placing unreasonable barriers in the path of end-user consumers who wish to switch carriers, the charges are also anti-consumer. Accordingly, Broadview's attempt to recover in wholesale rates the costs that it claims to incur in connection with customer transfers to other service providers must be rejected.

**D. The Department Should Follow the NYPSC's Recent Order Invalidating Broadview's Service Transfer Charges.**

The NYPSC recently ruled on the identical issue regarding Broadview's assessment of Service Transfer charges on Verizon in New York. Based on its findings, the NYPSC ordered Broadview "to file appropriate tariff revisions eliminating its customer service transfer charges." *Broadview Order*, at 8. The Department should rule accordingly.

When considering the same facts presented in this proceeding, the NYPSC determined that "the activities for which Verizon assesses service order charges and manual intervention surcharges are not entirely comparable to the tasks that Broadview

performs when it loses a customer to Verizon.” *Id.* at 7. Therefore, the NYPSC rejected Broadview’s attempt to apply Verizon’s rates.

Although the NYPSC recognized that when a Broadview customer disconnects service, “there may be some costs associated with performing such [administrative] functions,” the NYPSC found that Broadview did not quantify those costs, “nor does Verizon charge other carriers in a similar situation.” *Id.* Absent a proof of costs – which the NYPSC believes would be “negligible” - Broadview is prohibited from imposing its Service Transfer Charges on Verizon.

The *Broadview Order* applies the same reasoning relied on in the *Teleport Order*, in which the NYPSC determined that costs associated with transferring customers to a competitor are not recoverable as wholesale charges, but are properly treated as retail costs.<sup>7</sup> In the *Teleport Order*, the NYPSC ruled that

[Teleport] has not shown that these costs, other than [Customer Service Record] costs which are negligible, warrant explicit recovery. The service customer coordination of discontinuing billing is clearly a retail function. If a customer were simply to disconnect its retail service [Teleport] would have to review an order form and perform some coordination activities and administrative tasks such as updating databases. These retail costs are traditionally recovered in retail rates. In contrast to [Teleport’s] rate design, Verizon recovers many of the disconnect costs associated with its activities through a non-recurring charge imposed at the time of installation. Therefore, supported customer transfer costs are more appropriately recovered, if they are not already, in retail rates, or in up front connection charges, but not in a

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<sup>7</sup> Case 03-C-0636, *Complaint of Verizon NY Inc. Concerning Transfer Charges Imposed by TC Systems, Inc.*, Order (issued and effective January 21, 2004) (“*Teleport Order*”). In that decision, the NYPSC found that Verizon “does the lion’s share of the physical network activity necessary for a customer transfer.” *Id.* at 5. TC Systems Inc., formerly known as Teleport, is a subsidiary of AT&T Communications.



separate charge, such as [Teleport's] customer transfer charge.

*Id.* at 5-6. Accordingly, the NYPSC granted Verizon NY's complaint and denied the customer transfer charges imposed by Teleport.<sup>8</sup> That decision subsequently prompted Teleport, as well as other carriers, to withdraw voluntarily similar tariff provisions in a number of other states, including Massachusetts and Rhode Island.<sup>9</sup> Verizon Exhibit 1, at 10. The same conclusion – the elimination of Broadview's service transfer charges – should be reached in this proceeding as well.

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<sup>8</sup> Case 03-C-0636, *Complaint of Verizon NY Inc. Concerning Transfer Charges Imposed by TC Systems, Inc.*, Order Granting Verizon's Petition and Complaint, at 5-6 (issued and effective February 13, 2004) ("*Second Teleport Order*").

Broadview tries to make much of the fact that the *Teleport Order* was issued in the context of a rate which mirrored Verizon's rates for performing hot cuts (Broadview Exhibit 1, at 15-16), while here, in contrast, Broadview's Service Transfer Charges are modeled on Verizon's Service Order and Manual Intervention charges and each "recovers costs associated with activities undertaken by Broadview on behalf, and for the benefit, of requesting LECs." *Id.* at 4. It claims that "[t]hese costs, as well as the activities associated with them, are comparable to those for which Verizon assesses Service Order Charges and Manual Intervention Surcharges." *Id.* Broadview's contention is wrong.

Although Broadview selected different rate elements to mirror than those involved in the *Teleport* proceeding, the applicable principle is precisely the same in the two cases, and that principle clearly precludes the charges that Broadview seeks to impose here. Broadview ignores the essence of the *Teleport Order* - which is that relinquishing a customer at that customer's request is a retail, not a wholesale function, and that any costs associated with such function should be recovered, if at all, in retail rates. That fundamental principle renders moot the question of whether Broadview incurs any costs in connection with the relinquishment of a customer, or (if so) what the magnitude of such costs might be. *Id.*

<sup>9</sup> Complaint of Verizon Massachusetts Concerning Customer Transfer Charges Imposed by Teleport Communications Boston, D.T.E. 03-74; RI PUC Docket No. 3539 - Complaint of Verizon Rhode Island Concerning Customer Transfer Charges Imposed by TCG Rhode Island; Complaint of Verizon Massachusetts Concerning Customer Transfer Charges Imposed by Allegiance Communications Boston, D.T.E. 04-XX.. Likewise, the Pennsylvania Public Utility Commission ("PAPUC") suspended the customer transfer tariff filed by AT&T's Teleport subsidiaries, TCG Delaware Valley, Inc. and TCG Pittsburgh, Inc., and concluded that the tariff "may result in a barrier to entry." See, e.g., *Pennsylvania Public Utility Commission v. TCG Delaware Valley, Inc.*, Docket Number R-00027928, Order (December 19, 2002). TCG opted to withdraw the tariff as an alternative to suspension and the commencement of an investigation.

**E. The FCC Wireline Competition Bureau's Decision in the *Cavalier Virginia* Arbitration Does Not Support Broadview's Claims.**

In the *Cavalier Virginia* Arbitration,<sup>10</sup> the FCC's Wireline Competition Bureau ("WCB") stated that "[t]o the extent that Cavalier has demonstrated that it performs tasks comparable to those performed by Verizon, it would violate section 251(c)(2)(D) to allow Verizon to assess a charge on Cavalier but disallow a comparable charge by Cavalier on Verizon." 18 FCC Rcd at 887, ¶ 189. The WCB found that Verizon's UNE installation charge was a reasonable proxy for Cavalier's winback costs because the winback functions performed by Cavalier are "similar in purpose and scope" to the work that Verizon performs when it provides an unbundled loop for Cavalier customers.<sup>11</sup> *Id.* at ¶ 204. The WCB also determined that rates charged by CLECs are presumptively reasonable where such rates do not exceed the "comparable" rate charged by the incumbent. *Id.* at ¶ 205, n. 679.

As previously discussed, Broadview's charges are not "comparable to" any Verizon MA charge; thus, the principle announced by the WCB simply has no application here. Verizon MA's Service Order charges recover the costs it incurs when a CLEC orders wholesale services - such as UNE loops or ports - to serve a Verizon MA customer that has transferred to the CLEC. However, Verizon MA orders nothing from Broadview when a customer migrates to Verizon MA. Verizon Exhibit 1, at 12. And as

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<sup>10</sup> *In the Matter of Petition of Cavalier Telephone LLC Pursuant to Section 252(e)(5) of the Communications Act of Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc. and for Arbitration*, WC Docket No. 02-359, Memorandum Opinion and Order, 18 FCC Rcd 25, 887, ¶ 189 (CCB released Dec. 12, 2003) (footnote omitted).

<sup>11</sup> The *factual* finding made by the WCB on the basis of a somewhat ambiguous and unclear record — that "Cavalier's work in connection with a Verizon winback is similar in purpose and scope to the work that Verizon is responsible for performing when Cavalier submits a local service request

discussed above, Verizon MA imposes no charge on CLECs for performing the functions described in the Broadview Testimony in connection with the transfer of an end-user customer's retail service from Verizon MA to the CLEC. Verizon MA's charges are solely for the activities necessary to process an order for UNEs or Switched Interconnection services requested by a CLEC. If a CLEC does not request UNEs from Verizon MA to serve an end-user customer that has transferred service from Verizon MA to the CLEC – as in the case of a *fully facilities-based* carrier – then Verizon MA would not assess a Service Order Charge or Manual Intervention Surcharge.

If Broadview wishes to follow the WCB's order and mirror Verizon MA's charges, it must apply those charges in the *same* manner as Verizon MA for the provision of comparable services. This means that Broadview cannot impose Service Transfer Charges on another carrier unless it is also providing an unbundled loop, port or other network facilities to that carrier to serve the end-user customer. When a Broadview customer transfers service to Verizon MA, Broadview provides no “comparable” network facilities to Verizon.<sup>12</sup>

Accordingly, the *Cavalier Virginia* Arbitration does not support Broadview's contentions. Rather, the Department should follow the same course here as the NYPSC followed in its recent *Broadview Order*<sup>13</sup> and prohibit Broadview from imposing Service

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to Verizon to move a customer from Verizon to Cavalier” (*id.* ¶ 204) — is simply incorrect, and is the subject of a pending petition for reconsideration and clarification.

<sup>12</sup> In addition, Broadview does not even apply its Service Transfer Charge in a manner comparable to Verizon MA's Service Order Charge. Broadview applies its charge on a per-line basis, whereas Verizon MA's charge applies on a per-order basis. Likewise Verizon MA's manual processing charge is limited to situations in which the CLEC fails to use the available electronic ordering system to place an order for a wholesale service (*e.g.*, UNE loop). Verizon Exhibit 1, at 14.

<sup>13</sup> *Broadview Order*, at 7-8. The NYPSC followed the same course on a different issue, in its recent hot cut order, where, “[b]ased on careful analysis of the record before us, we reach a somewhat

Transfer Charges on Verizon MA that bear no relationship to any wholesale services provided to Verizon. Verizon Exhibit 1, at 12.

**G. The Dispute Over the Use of Broadview's "Web Center" Does Not Justify the Imposition of Service Transfer Charges.**

Broadview states that it supports a web site that permits Verizon MA to identify and pull Customer Service Records ("CSRs") without Broadview intervention and submit LSRs electronically by directly entering data into Broadview's systems. Broadview Exhibit 1, at 10-11. It contends that Verizon MA's refusal to use this "Web Center" "required Broadview to manually print LSRs and key their contents into Broadview's systems ... and to field calls from Verizon verifying order status." *Id.*

The dispute over the use of the Broadview Web Center is irrelevant to, and provides no justification for, a Service Transfer Charge, which remains a *retail* charge imposed under circumstances in which Verizon does not impose any charge at all. Verizon Exhibit 1, at 16. When Broadview first approached Verizon on this issue in 2002, Verizon was not capable of using the Web Center. Broadview Exhibit 4. Since then, however, Verizon has worked with Broadview in an effort to establish electronic Verizon/CLEC interfaces that can accommodate the use of the Web Center.

Broadview should not be permitted to impose Service Transfer Charges on Verizon MA regardless of whether Verizon MA submits its LSR electronically or manually to effect a change in the Broadview customer's service. Verizon MA charges CLECs for ordering UNE loops used by CLECs to serve their customers. It does not charge CLECs for simply migrating a Verizon customer to another carrier, regardless of

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different conclusion from that reached by the [WCB]." Case 02-C-1425, *Order Setting Permanent Hot Cut Rates* at 22 (issued and effective August 25, 2004).

whether the CLEC customer transfer notice comes in electronically or manually. Moreover, as the NYPSC found, the costs of processing the transfer do not relate to the provision of wholesale services, and therefore are not recoverable from Verizon, but rather should be treated as retail costs. *Broadview Order*, at 7-8; Verizon Exhibit 1, at 18.

Finally, there are industry guidelines governing customer migration practices among carriers (Verizon Exhibit 4), and any dispute relating to the transmission of CSR/LSR can – and should – be readily addressed through business-to-business negotiations instead of through regulatory mandate or the imposition of unlawful Service Transfer Charges.

### **CONCLUSION**

Broadview's charges are not comparable to Verizon MA's charges – which apply only when a CLEC orders wholesale services, such as UNEs, to enable the new carrier to serve Verizon's former retail customer. As Verizon MA has demonstrated, the purpose behind the administrative work that Broadview relies upon in support of its Service Transfer Charges is the termination of its customer's service and the transfer of such service to Verizon MA. Verizon MA does not charge for the similar services it performs when Broadview or another local exchange carrier wins a customer from Verizon MA. Nor does any other CLEC in Massachusetts impose such charges.

Broadview submitted no independent evidence that its Service Transfer Charges bear a reasonable relationship to its costs. To the extent that Broadview incurs any costs for these retail activities, they should be recovered from the true cost causer – the Broadview retail customers – not from Verizon MA and other carriers. Thus, Broadview should not be permitted to charge Verizon MA for these activities.

Accordingly, for the foregoing reasons, the Department should grant Verizon MA's Complaint and direct Broadview to remove the Service Transfer Charges from its tariff.

Respectfully submitted,

VERIZON MASSACHUSETTS

Its Attorney,

A handwritten signature in cursive script, reading "Barbara Anne Sousa", is positioned above a horizontal line.

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Dated: July 11, 2005

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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|   |   |  |
|---|---|--|
| Complaint of Verizon Massachusetts          | ) |  |
| Concerning Customer Transfer                | ) |  |
| Charges Imposed by Broadview Networks, Inc. | ) |  |

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D.T.E. 05-4

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